IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 282 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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20TH CENTURY FINANCE CORPORATION LTD.,

Versus

SHAIKH TAHIRHUSSEIN ABDULLA

Appearance:

1. Criminal Revision Application No. 282 of 2001

MR AR MAJMUDAR for Petitioner No. 1

MR CL SONI for Respondent No. 1

MR TEJAS M BAROT for Respondent No. 2

MR BD DESAI Ld. APP for Respondent No. 3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 26/04/2002

ORAL JUDGEMENT

Heard ld. Counsel for the parties.

Rule. Mr. CL Soni learned counsel waives service of rule o!n behalf of respondent no. 1, Mr. Tejas Barot learned counsel waives service of rule on behalf of respondent no. 2 and Mr. BD Desai learned APP waives service of rule on behalf of respondent no. 3-State.

In response of the submissio!ns made by Mr AR Majmudar learned counsel, the learned counsel Mr. CL Soni for the respondent no. 2 has mainly submitted that the respondent no. 1 is a bonafide purchaser with value without notice and he has paid full market value of the vehicle in question and, therefore only the vehicle has been handed over to him and he should be permitted to continue with the custody of mudamal vehicle. It is also submitted that respondent no. 1 has also executed the surety bond worth Rs. 5 lacs and, therefore, the petitioner-company is not likely to be prejudiced and in the event of failure to establish the case at the conclusion of the trial, than the petitioner-company can be handed over the vehicle in question.

It is pointed out that the present petitioner and respondent no. 1 have initiated the proceedings against respondent n!o. 2-Shaikh Nasir Mulla for the transactions in question. These proceedings are independent proceedings and obviously the order passed by the ld. trial court would not prejudice the rights and contentions of the present petitioner or respondent no. 2 in this proceeding.

The ratio of the decision of the Apex Court in the case of K. A. Mathai @ Babu & Anr. vs. Kora Bibbikutty & Anr. reported in 1996 SCC (Cri.) p. 281 clealry helps the present petitioner. It is not a matter of dispute that the vehicle in question was under hire purchase agreement with the petitioner-company and the petitioner-company has not been paid the amount by the purchaser i.e. respondent no. 2. Even for the sake of argument, it is accepted that by inducing the respondent no. 1 after receipt of the huge consideration for parting with the vehicle inquestion, that amount was not paid to the petitioner-company but it would not help the respondent no. 1. The ld. Trial Court has erred in appreciating the relavant law in this regard and the discretion has been exercised concentrating on the principles of convenience while dealing with muddamal under sec. 451 of CrPC, therefore, this revision has to be allowed.

The petitioner is held entitled to have the possession of the motor vehicle TATA SUMO bearing No.

MH-12-JA-1838 at present in the custody of respondent no. 1. Ld.Counsel for respondent no. 1 Mr. CL Soni states that respondent no. 1 will hand over the vehicle in question within a week to the office of petitioner-company at Ahmedabad and in that vent, the petitioner-company shall hand over the pakka receipt to respondent no. 1 stating the details of the condition of the vehicle, so handed over, failing which the petitioner-company will be entitled to have the custody of the vehicle on the strength of this order and under a panchnama prepared in presence of responsible officer of the petitioner-company and one person of the locality when the vehicle is seized. Liability of the surety, at the moment the vehicle is handed over to or seized by, the petitioner-company, would come to an end. The entire amount from respondent no. 2, if realised, as per the account or against the full and final settlement, in that event, the custody of the vehicle in question shall be handed over to the present respondent no. 1 till trial and by way of interim arrangement or as per the direction of the competent court.

Rule is made absolute accordingly.

(C.K. BUCH,J .)
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